

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2839

IN THE MATTER OF:

Served March 21, 1986

Application of CRW TRANSPORTATION)
SYSTEM ENTERPRISES for a)
Certificate of Public Convenience)
and Necessity to Conduct Special)
Operations)

Case No. AP-85-26

By Order No. 2817, served January 22, 1986, the application of CRW Transportation Systems Enterprises ("CRW" or "petitioner") for a certificate of public convenience and necessity to conduct special operations was denied for lack of financial fitness.

On February 21, 1986, CRW filed an application for reconsideration of Order No. 2817, and on March 5, 1986, protestant Webb Tours, Inc., filed its reply thereto. After careful review of the evidence and the contentions of the parties, we find that the application for reconsideration should be denied.

CRW contends that the Commission erred in finding petitioner financially unfit where at the time of the hearing it had neither assembled capital from internal sources sufficient to institute the proposed service nor did it intend to borrow money to finance that service. In support of its position petitioner cites two decisions of the Interstate Commerce Commission: Autolog Corporation, Extension - 16 States, 131 M.C.C. 494 (1979), and Spokane, Portland and Seattle Transportation Co., Common Carrier Application, 26 M.C.C. 260 (1940). We find neither case persuasive inasmuch as both involve carriers clearly capable of providing the service for which authority was sought. In fact in Autolog Corporation Extension - 16 States, *supra* at 496 the ICC stated

The financial fitness of an applicant is pertinent only in relation to whether it can adequately conduct the proposed operation. Cf. Distributors Service Co., Extension - Foods, 118 M.C.C. 322, 328 (1973).

The record in this case clearly demonstrated petitioner's financial inability to undertake the proposed service. It was on that inability that our decision turned, not on any estimates of the long-term financial success or failure of CRW's proposed service. In light of CRW's established inability to begin to conduct the operations for

which it here seeks authority, we are unable to make the finding required by Title II, Article XII, Section 4(b) of the Compact that CRW is fit, willing and able to perform such transportation. Absent such a finding the application must stand denied without prejudice.

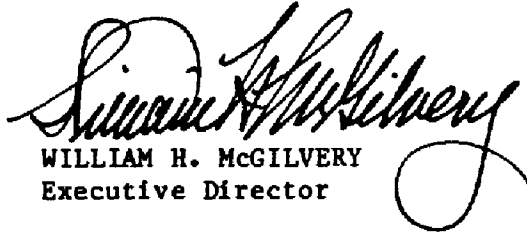
As an alternative, applicant requests that the Commission reopen the record for the receipt of additional evidence concerning financial fitness. Commission Rule 27-01 provides:

27-01. Method of Reopening -- By the Parties. At any time after the conclusion of a hearing in a proceeding or adjournment thereof sine die, but before entering and issuance by the Commission of a final order or rule, any party to the proceeding or staff counsel may file with the Commission a petition to reopen the proceeding for the purpose of taking additional evidence. Such petition shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or law alleged to have occurred since the conclusion of the hearing, and shall in all other respects conform as applicable to the requirements of Rules 4 and 5.

First, the motion to reopen, filed after the decision, is untimely. However, even if it had been timely filed, it fails to set forth clearly any facts claimed to constitute grounds to reopen. If applicant had corrected its financial posture, one would surely expect the strongest possible indication of that fact in support of a request to reopen. Rule 27-02 allows the Commission to reopen on its own motion if it has reason to believe the conditions of fact have changed. We are given no reason to believe the facts have changed.

THEREFORE, IT IS ORDERED that the Application for Reconsideration and Request to Reopen of CRW Transportation System Enterprises are hereby denied.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:


WILLIAM H. MCGILVERY
Executive Director